Nos. 85-1329 and 85-6207

(1)

IN THE

Supreme Court of the United States

OCTOBER TERM, 1985

GERALD J. YOUNG, *et al.*,

Petitioners,

—against—

U.S.A. *ex rel.* VUITTON ET FILS S.A., *et al.*,

Respondent.

BARRY DEAN KLAYMINC,

Petitioner,

—against—

U.S.A. *ex rel.* VUITTON ET FILS S.A., *et al.*,

Respondent.

ON PETITIONS FOR WRITS OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

BRIEF OF RESPONDENT IN OPPOSITION

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May 5, 1986

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Questions Presented

1. Whether the appointment by the District Court of opposing counsel to prosecute a criminal contempt proceeding pursuant to Fed. R. Crim. P. 42(b) violated petitioners' rights under the due process clause of the Fifth Amendment.

2. Whether a District Court may authorize a private attorney appointed pursuant to Fed. R. Crim. P. 42(b) to continue an ongoing investigation in order to obtain additional evidence to be used in the criminal contempt trial.

3. Whether the Court of Appeals erred in affirming the criminal contempt sentences of the five petitioners which ranged from six months to five years.

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BRIEF OF RESPONDENT IN OPPOSITION

Respondent respectfully prays that the joint petition filed by Gerald J. Young, George Cariste, Sol N. Klayminc and Nathan Helfand, No. 85-1329, and the petition filed by Barry Dean Klayminc, No. 85-6207, for writs of certiorari

to the United States Court of Appeals for the Second Circuit be denied.[1]

Statement of the Case

Petitioner Sol N. Klayminc is attempting to avoid the consequences of his second conviction for criminal contempt. On December 12, 1978, Sol Klayminc consented to the entry of a preliminary injunction which enjoined him (and others named) from trafficking in counterfeit Vuitton merchandise.[2] (A 3)[3] In July, 1981, Vuitton learned that Sol Klayminc, through his family-owned companies, Karen Bags, Inc. ("Karen Bags") and Jade Handbag Co. ("Jade"), together with other persons, were continuing to offer for sale and to sell counterfeit Vuitton products in violation of the preliminary injunction. This led to Sol Klayminc's first prosecution for criminal contempt.[4]

The District Court directed that the first contempt be referred to a magistrate for trial as a petty offense. At the

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[1] Vuitton et Fils S.A. and Louis Vuitton S.A. are now a single company, called Louis Vuitton ("Vuitton"), which is organized under the laws of the Republic of France. Vuitton has a number of affiliates, none of which are publicly traded. Vuitton has no other related corporate entities that would be required to be set forth pursuant to Rule 28.1.

[2] Vuitton is a leading manufacturer of luggage and other related goods and its trademark, consisting of a design using the letters "L" and "V" superimposed upon one another, is recorded on the Principal Trademark Register of the United States Patent Office as Registered Trademark 297,594.

[3] Citation is to the appendices of petition No. 85-6207.

[4] On July 8, 1981, the District Court appointed J. Joseph Bainton, Esq., Vuitton's attorney, pursuant to Fed. R. Crim. P. 42(b), to prosecute Sol Klayminc and others for alleged criminal contempt. On July 10, 1981, United States Marshals seized three truckloads of counterfeit Vuitton goods from the business premises of Sol Klayminc's family-owned companies.

conclusion of the trial, Sol Klayminc, Karen Bags and Jade were convicted of criminal contempt. Sol Klayminc received a suspended sentence and was placed on unsupervised probation for one year. During this period of probation, Sol Klayminc committed the acts that resulted in his second conviction for criminal contempt. His appeal from this second contempt conviction is the subject of his petition to this Court.

On July 30, 1982, the underlying civil action was settled upon the terms that Sol Klayminc, Barry Klayminc, Sylvia Klayminc and their affiliated companies agreed to the entry of a permanent injunction and the payment to Vuitton of $100,000.

In early 1983, Vuitton, along with several other trademark owners, was contacted by Kanner Security Group, Inc. ("Kanner"), a Florida private investigation firm, and invited to participate in a private investigation intended to identify persons trafficking in counterfeit goods. As part of the investigation, Kanner personnel, many of whom are former FBI agents, were to pose as persons interested in trading in counterfeit trademarked merchandise on a large scale. Vuitton decided to participate in the Kanner private investigation as part of its general trademark enforcement program.

During the course of the investigation, Kanner's agents met petitioner Nathan Helfand. Helfand arranged for Kanner investigators to purchase a variety of counterfeit trademarked goods. Helfand also introduced Kanner agents to Sol Klayminc and identified him as a good source for counterfeit Vuitton goods.

Vuitton learned, through the Kanner investigation, that Sol Klayminc told petitioner Helfand that Klayminc "had been burned by Louis Vuitton to the tune of $100,000 in

New York City" (R 611),[5] but was still in the business of selling counterfeit Vuitton goods. During a meeting on March 27, 1983, petitioners Helfand and Sol Klayminc also prepared a handwritten memorandum that set forth in some detail their plans to use a factory in Haiti to produce large quantities of counterfeit Vuitton goods. (R 644-645) This memorandum was given to one of the Kanner investigators. Sol Klayminc also delivered to Helfand several counterfeit Vuitton articles. (R 613)

On March 30, 1983, on the basis of information from the private investigation, Vuitton applied to the District Court for an order pursuant to Fed. R. Crim. P. 42(b) specially appointing its attorneys, J. Joseph Bainton, Esq., and Robert P. Devlin, Esq., to investigate further and thereafter to prosecute petitioners Sol Klayminc, Barry Klayminc, Nathan Helfand, George Cariste and others, whose actual identities were then unknown, for criminal contempt. In an affidavit submitted to the District Court, Mr. Bainton fully informed the District Court of the prior proceedings against Sol Klayminc, and described in detail the facts uncovered in the Kanner investigation which implicated Sol Klayminc and certain other petitioners. (R 610-615)

On the basis of the facts set forth, the District Court (Lasker, J.) concluded that it was proper to appoint Messrs. Bainton and Devlin pursuant to Fed. R. Crim. P. 42(b) to prosecute the alleged criminal contempt. The District Court specifically held that "probable cause exists to believe that [Sol Klayminc, Barry Klayminc, George Cariste and others] are knowingly engaged in a course of conduct

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[5] Citations to the Joint Appendix of Appellants and the Supplemental Appendix of Appellee on appeal to the Court of Appeals are in the form "R [page]".

criminally contumacious of this Court's final consent judgment and permanent injunction filed July 30, 1982 . . ." (R 604-605). The District Court also authorized Messrs. Bainton and Devlin to continue their investigation of the alleged counterfeiting scheme. The principal benefit of the District Court's authorization of the investigation was that many of the conversations between the private investigators and the petitioners were recorded on audio-tape or video-tape. This allowed Messrs. Bainton and Devlin to "define more fully the boundaries of an already well developed contempt." *United States ex rel. Vuitton et Fils S.A.* v. *Karen Bags, Inc.*, 592 F. Supp. 734 (S.D.N.Y. 1984) (*"Vuitton I"*).

On April 6, 1983, Messrs. Bainton and Devlin appeared before Judge Brieant, to whom the case had been assigned, and as requested by Judge Lasker, advised Judge Brieant of the order of appointment.[6] Mr. Bainton also informed the District Court of the most recent developments in the investigation, and that the investigators had arranged to meet with a source for counterfeit Vuitton fabric the following week in California. (R 660-661) Judge Brieant requested that Mr. Bainton fully inform the United States Attorney's office in New York of the information received. (R 662)

Mr. Bainton brought this proceeding to the attention of Lawrence Pedowitz, Chief, Criminal Division, Office of the United States Attorney for the Southern District of New York. (A 664) The United States Attorney's office was fully informed of the Rule 42(b) appointment and was free to take whatever role it chose in the prosecution and the continued investigation. Mr. Pedowitz chose not to

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[6] The application for the special appointment had been made before Judge Lasker because at the time of the application, Judge Brieant, to whom the case had been assigned, was out of the district.

take an active role and simply wished Mr. Bainton good luck. (A 6) Mr. Bainton also discussed the case with John Kildebeck, Head Deputy District Attorney for the County of Los Angeles. Mr. Bainton informed him of his appointment as a special prosecutor and, pursuant to Mr. Kildebeck's request, that portion of the investigation that was conducted in California was done under the direction of the District Attorney's office. (R 665)

On April 26, 1983, the District Court made the decision to sign the Order to Show Cause charging petitioners with criminal contempt, and directed the prosecution of the criminal contempts to go forward. (R 667) Petitioners' pre-trial motions were considered and denied by the District Court in *Vuitton I*, 592 F. Supp. 734 (S.D.N.Y. 1984). A jury found the petitioners guilty of criminal contempt following a nine-day trial. The District Court considered and denied petitioners' post-trial motions in *United States ex rel. Vuitton et Fils S.A.* v. *Karen Bags, Inc.*, 602 F. Supp. 1052 (S.D.N.Y. 1985) ("*Vuitton II*"). The Court of Appeals affirmed the convictions in an opinion reported at 780 F.2d 179 (2d Cir. 1985), and these petitions for writs of certiorari were thereafter filed.

Reasons for Denying the Writs

I.

The Appointment of Opposing Counsel to Prosecute a Criminal Contempt Is Expressly Authorized by Fed. R. Crim. P. 42(b) and Prior Judicial Practice.

Petitioners ask this Court to restrict the discretion of the District Court as to the identity of the attorney whom the District Court may appoint to prosecute a criminal contempt. Rule 42(b) of the Federal Rules of Criminal Procedure [7] provides in pertinent part as follows:

> "A criminal contempt except as provided in subdivision (a) of this rule shall be prosecuted on notice. The notice shall state the time and place of hearing, allowing a reasonable time for the preparation of the defense, and shall state the essential facts constituting the criminal contempt charged and describe it as such. The notice shall be given orally by the judge in open court in the presence of the defendant or, on application of the United States attorney *or of an attorney appointed by the court for that purpose,* by an order to show cause or an order of arrest . . . . "

Fed. R. Crim. P. 42(b) (emphasis supplied). In this case, the District Court invoked the authority of Rule 42(b) to appoint two private attorneys to prosecute a criminal contempt arising out of petitioners' alleged violation of a permanent injunction prohibiting them from trafficking in counterfeit goods. Petitioners would have this Court amend Rule 42(b) so as to forbid the District Court from appoint-

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[7] Fed. R. Crim P. 42(a) provides that the judge may punish summarily a criminal contempt if the conduct constituting the contempt was committed in the presence of the court.

ing the attorneys for the party in the underlying civil suit as special prosecutors for the criminal contempt proceeding.

The *per se* prohibition upon the District Court sought by petitioners would effectively remove any reasonable likelihood that the criminal contempts of these petitioners, or any other persons similarly situated, would be prosecuted. Under petitioners' argument, the District Court would be required to select counsel unrelated to the party who obtained the underlying civil injunction, or to rely upon the availability of staff from the United States Attorney's office. The Second Circuit in *Musidor, B.V.* v. *Great American Screen,* 658 F.2d 60 (2d Cir. 1981), *cert. denied,* 455 U.S. 944 (1982), rejected arguments identical to those asserted here. That court explained:

> "The practicalities of the situation—when the criminal contempt occurs outside the presence of the court but in civil litigation—require that the court be permitted to appoint counsel for the opposing party to prosecute the contempt. There is no fund out of which to pay other counsel in such an event, nor would it be proper that he be paid by the opposing party. This is not the kind of case for which legal aid societies or public defenders are available."

658 F.2d at 65. The unavailability of any fund to pay private attorneys to prosecute criminal contempts, or even to reimburse them for their out-of-pocket costs, renders petitioners' proposal unworkable.

Similarly, exclusive reliance upon the United States Attorney's office is neither practical nor contemplated by Rule 42(b). As the District Court noted, the "offices of the United States Attorneys throughout the nation are already overburdened by those civil and criminal matters for which they have exclusive responsibility . . . [and] the special

appointment procedure provided for in Rule 42 provides a fair and efficient method of vindicating 'the public interest in orderly government [which] demands respect for compliance with court mandates,' *United States* v. *Petito*, 671 F.2d 68, 72 (2d Cir.), *cert. denied*, 459 U.S. 824 (1982), and protecting the interests of civil plaintiffs like Vuitton." *Vuitton I*, 592 F. Supp. at 744 (footnote omitted). In the instant case, Mr. Pedowitz, Chief of the Criminal Division of the Office of the United States Attorney for the Southern District of New York, was fully informed of the Rule 42(b) appointment and his office could have participated in the prosecution to whatever degree believed appropriate. The United States Attorney's office chose not to take an active role and allowed the matter to be handled by the specially appointed private attorneys.

The Second Circuit noted that "[t]he practice of appointing [opposing] counsel as prosecutor has a long history in this circuit." (A 8) In *McCann* v. *New York Stock Exchange*, 80 F.2d 211, 214 (2d Cir. 1935), *cert. denied*, 299 U.S. 603 (1936), a case which predates Rule 42(b), Judge Learned Hand noted both the availability and necessity of the appointment of opposing counsel, explaining:

> "But the judge may prefer to use the attorney of a party, who will indeed ordinarily be his only means of information when the contempt is not in his presence. There is no reason why he should not do so, and every reason why he should . . . ."

80 F.2d at 214. The Advisory Committee On Proposed Rules was well aware of the *McCann* decision at the time Rule 42(b) was drafted. Fed. R. Crim. P. 42(b) (Advisory Committee's notes); *see Musidor*, 658 F.2d at 64.

Per se disqualification of a party's counsel is not necessary to secure constitutional protections. No violation of petitioners' right to due process occurred in this case. (A 8)

As the Second Circuit below held, "[p]rosecutors appointed under Fed. R. Crim. P. 42(b) are particularly susceptible of judicial control." (A 10) First, the District Court decides whether or not to appoint a particular attorney as a special prosecutor. Second, the District Court, not the special prosecutor, ultimately decides whether to proceed with the contempt prosecution. Third, the defendants are able to move at any time for the disqualification of the attorney appointed, as they did here, and have the District Court reconsider the propriety of the appointment, or review any alleged prosecutorial misconduct.[8] Fourth, supervision of the special prosecutor is provided during the course of the trial by the District Court itself. As the Second Circuit noted, "Judge Brieant conducted the proceedings and the trial with a sharp eye toward ensuring that appellants were 'accorded all the protections given to other criminal defendants.' [citation omitted]." (A 10)

The petitioners' heavy reliance upon *Polo Fashions, Inc.* v. *Stock Buyers International, Inc.*, 760 F.2d 698 (6th Cir. 1985), *petition for cert. filed*, No. 85-455 (Sept. 17, 1985) ("*Polo*"), is misplaced. The *Polo* court did not hold that counsel for a party in an underlying civil litigation was prohibited from being appointed to participate in the prosecution of a criminal contempt. Instead, the *Polo* court, as a matter of its supervisory authority,[9] held that opposing counsel "could assist the United States Attorney" in the

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[8] In the instant case, for example, petitioners alleged that Messrs. Bainton and Devlin should have been disqualified because, *inter alia*, Sol Klayminc brought a suit for slander against Mr. Bainton following Sol Klayminc's first criminal contempt conviction. This claim was rejected by the Court of Appeals and the District Court, both of which noted that the "suit was clearly frivolous; it was never pressed, and was finally dismissed by consent." (A 10; *see* C 21)

[9] The *Polo* court was careful to note that it did not decide that the appointment of opposing counsel as a special prosecutor would constitute any due process violation. 760 F.2d at 704.

prosecution of the contempt, "but could not proceed alone." 760 F.2d at 704. The *Polo* court also held that where "the United States Attorney should decline to prosecute upon request, then the district court may appoint one or more disinterested attorneys to do so." 760 F.2d at 705. When a disinterested attorney is appointed, however, "again, counsel for an interested party may be appointed to assist." *Id.*

Both the Sixth Circuit and the Second Circuit clearly recognize that securing the prosecution of those who willfully violate civil injunctions requires that the private attorneys who obtained the injunction be allowed to participate in the prosecution of the criminal contempt. The two Circuits differ in that the Second Circuit has placed its reliance upon the District Court to exercise its discretion concerning the appointment of counsel and the supervision of the prosecution of the contempt. The Sixth Circuit has sought to supplement such control by requiring the additional involvement of a "neutral attorney" as a co-prosecutor.[10]

The other alleged conflicts among the Courts of Appeal relied upon by petitioners are even more tenuous. The Fifth Circuit's decision in *Brotherhood of Locomotive Firemen & Enginemen* v. *United States,* 411 F.2d 312 (5th Cir. 1969), held that the contempt judgment be vacated because "we conclude that the proceedings did not meet the demands of due process as to notice and time." 411 F.2d at 317-18 (footnote omitted). Although strong *dictum* in that case stated that criminal contempt proceedings must be in the sole control of the United States Attorney (411 F.2d at 319), the Fifth Circuit recently avoided ruling on the con-

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[10] It should be noted, however, that as a practical matter, the *Polo* decision will serve to impede substantially the availability of criminal contempt prosecutions, because the *Polo* court has not solved the problem of there being no fund or other means to compensate the required neutral attorney.

tinued validity of this *dictum*. *United States* v. *McKenzie*, 735 F.2d 907, 910 n.11 (5th Cir. 1984). Similarly, in *Midway Manufacturing Co.* v. *Kruckenberg*, 779 F.2d 624 (11th Cir. 1986), the Court also expressly declined "to decide the issue of whether there is a plenary rule forbidding in all criminal cases appointment of opposing counsel as prosecutors", and instead ordered a remand with instructions to the District Court to hold a hearing to determine whether "under the particular facts and circumstances of this case [the] appointment was appropriate." 779 F.2d at 626.

The other two cases upon which petitioners rely are inapposite because neither addresses the propriety of a special appointment. Rather, each of those cases only holds that the decision to initiate a criminal contempt proceeding belongs to the District Court alone, and that a civil party may not appeal from the refusal of the District Court to initiate such proceedings. *See Ramos Colon* v. *United States Attorney*, 576 F.2d 1, 5 (1st Cir. 1978); *Kienle* v. *Jewel Tea Co.*, 222 F.2d 98, 100 (7th Cir. 1955).

The District Court has always had the authority to punish, by criminal fine or imprisonment, contempt of its authority. *See* 18 U.S.C. § 401(3); 28 U.S.C. § 1651; *United States* v. *Gracia*, 755 F.2d 984, 988 (2d Cir. 1985); *Vuitton et Fils S.A.* v. *J. Young Enterprises, Inc.*, 644 F.2d 769, 779 (9th Cir. 1981); *Vuitton I*, 592 F. Supp. at 739-41.[11] The District Court decides whether to allow

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[11] 18 U.S.C. § 401 provides as follows:

"§ 401. Power of court

A court of the United States shall have power to punish by fine or imprisonment, at its discretion, such contempt of its authority, and none other, as—

(1) Misbehavior of any person in its presence or so near thereto as to obstruct the administration of justice;

(footnote continued on following page)

the initiation of a contempt prosecution as a matter of its authority, and the proceeding remains uniquely subject to its control.

A civil injunction is more than a promise by the defendant to respect the legal rights of another; it is an order of a United States Court. The availability to the District Court of private attorneys, in addition to the United States Attorney, to prosecute criminal contempts under Rule 42(b) is essential to secure the prosecution of violations of civil injunctions. The Second Circuit's affirmation of the right of a District Court to appoint private attorneys to prosecute violations of its orders by means of criminal contempt proceedings is proper, and does not provide any grounds for review by this Court.

II.

The District Court's Authorization of a Limited Continuation of an Investigation Does Not Present a Ground for Granting Review.

Vuitton was engaged in a lawful private investigation during which it learned that Sol Klayminc, while still on probation from his first criminal contempt conviction, and

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(footnote continued from preceding page)

(2) Misbehavior of any of its officers in their official transactions;

(3) Disobedience or resistance to its lawful writ, process, order, rule, decree, or command."

Petitioners contend that Rule 42(b) is only a notice provision and assert that there is no statutory authorization for a private attorney to prosecute a criminal contempt. Petition No. 85-6207 at 15-16. The presence of express statutory authorization under both 18 U.S.C. § 401 and 28 U.S.C. § 1651 renders petitioners' contentions without merit. *See J. Young Enterprises,* 644 F.2d at 779. Nor does the District Court's power to prosecute criminal contempts violate the separation of powers. *Gracia,* 755 F.2d at 988.

other petitioners were trafficking in counterfeit Vuitton goods in violation of a permanent injunction. Vuitton brought this information to the attention of the District Court on March 30, 1983. At that time, Vuitton requested appointment of its counsel under Rule 42(b) to prosecute the criminal contempt and also authorization to allow the investigation to go forward in order to secure additional evidence and to identify other participants in the counterfeiting scheme.

Vuitton could have delayed its Rule 42(b) request until April 26, 1983, and then moved both to be appointed under Rule 42(b) and to serve the petitioners the Order to Show Cause with notice of their criminal contempts. The sole advantage of the District Court's approval of continuation of the investigation under Rule 42(b) was that it allowed many of the telephone conversations and meetings between investigators and the petitioners to be recorded.[12] In the absence of such authorization, the primary evidence at trial would have been the testimony of the investigators. The availability of the recordings allowed petitioners to be convicted based upon evidence "out of their own mouths . . . ." *Vuitton II*, 602 F. Supp. at 1056, 1058. *Cf. United States* v. *Williams*, 705 F.2d 603 (2d Cir.), *cert. denied*, 464 U.S. 1007 (1983).

To date, the Second Circuit is the only court to consider the propriety of authorizing a post-appointment investigation. Since no other court has yet considered this question,

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[12] The recordings were conducted by or with the consent of the investigator who participated in the conversation or meeting. Court authorization was requested because it could be unethical for an attorney to participate in the recording of a conversation without the consent of all participants. No similar ethical prohibition applies to prosecutors, and there is no Constitutional issue raised by the use of such procedures. *See United States* v. *White*, 401 U.S. 745, 749-51 (1971).

the request for this Court to review this issue should be denied. *See McCray* v. *New York*, 461 U.S. 961 (1983) (Stevens, J.).

III.

This Court Should Not Review the Sentences Imposed.

The sentences imposed, in the words of the Second Circuit, "reflect a range of punishment that comports with each defendant's culpability." (A 15) This Court has instructed that, because there is no statutory limit upon a District Court's sentencing power in cases of criminal contempt, appellate courts have "a special responsibility for determining that the power is not abused." *Green* v. *United States*, 356 U.S. 165, 188 (1958), *partially overruled on other grounds, Bloom* v. *Illinois*, 391 U.S. 194 (1968). *See United States* v. *Gracia*, 755 F.2d 984, 988 (2d Cir. 1985). This Court has also stated that, in imposing a penalty for criminal contempt, the District Court could properly consider (i) "the extent of the willful and deliberate defiance of the court's order", (ii) "the seriousness of the consequences of the contumacious behavior", (iii) "the necessity of effectively terminating the defendant's defiance as required by the public interest", and (iv) "the importance of deterring such acts in the future." *United States* v. *United Mine Workers of America*, 330 U.S. 258, 303 (1947). *See Gracia*, 755 F.2d at 990; *United States* v. *Rauch*, 717 F.2d 448, 450-51 (8th Cir. 1983). The District Court carefully exercised its responsibilities and the Court of Appeals properly affirmed holding that "[i]n light of the defendants' deliberate flaunting of the law over an extended period of time and in light of their calculated acts in violation of the court's injunction, the sentences are not excessive." (A 15-16)

The sentences imposed by the District Court set forth a range of punishment whereby those who knowingly and willfully violated the court orders were dealt with severely and those whose culpability was less, who demonstrated contrition, and who cooperated with the government in the prosecution of others, avoided incarceration. The sentences imposed are neither excessive nor disproportionate and are fully within the discretion entrusted to the District Court. *See, e.g., United States* v. *Brummitt,* 665 F.2d 521, 526 (5th Cir. 1981), *cert. denied,* 456 U.S. 977 (1982) (five year sentence); *United States* v. *Berardelli,* 565 F.2d 24, 30-31 (2d Cir. 1977) (five year sentence); *United States* v. *Thompson,* 214 F.2d 545 (2d Cir.), *cert. denied,* 348 U.S. 841 (1954), (four year sentence); *United States* v. *Hall,* 198 F.2d 726 (2d Cir. 1952), *cert. denied,* 345 U.S. 905 (1953) (three year sentence).

Sol Klayminc, whom the District Court found to be "the principal malefactor" (R 241), and who committed the crime while on probation for his prior conviction (R 240), was sentenced to five years imprisonment. Young, "a principal factor in the plan" because he was to supply the counterfeit fabric from his source in Japan, and who had willfully violated the preliminary injunction entered against him by order of the Court of Appeals in *Vuitton et Fils S.A.* v. *J. Young Enterprises, Inc.,* 644 F.2d 769, 778-79 (9th Cir. 1981), was sentenced to two and one-half years imprisonment. (R 241-242) Barry Klayminc, who had consented to the 1982 injunction, but nevertheless assisted his father in the criminal enterprise (*see Vuitton II,* 602 F. Supp. at 1066-1068), was sentenced to nine months imprisonment. The District Court specifically noted in Barry Klayminc's case that he had "a lesser culpability . . . in part [because] of his loyalty and faith to his own father . . . ." (R 242) Cariste, who actively participated

in the plan by, among other acts, delivering 25 counterfeit bags and cutting components for 50 others, was also sentenced to nine months imprisonment. (R 243) Helfand, who helped to arrange the April 5, 1983, meeting between petitioner Sol Klayminc and the Kanner private investigator and who continued to be an active participant in the intentional violations of the injunction, the Court found "less culpable" than the other defendants and was sentenced to six months imprisonment. (R 242)

The final two defendants sentenced by the District Court were Robert Pariseault and David Rochman (neither is a petitioner here). Both of these defendants pleaded guilty and thereafter actively cooperated. The Court noted that "[b]oth those cases are characterized by contrition and a modest amount of cooperation" (R 208), and these two defendants were given suspended sentences and placed on probation.

In sum, the sentences imposed by the District Court were well within its discretion, were properly affirmed by the Court of Appeals, and provide no grounds for review by this Court.

Conclusion

The petitions for writs of certiorari to the United States Court of Appeals for the Second Circuit present no adequate grounds for review and should be denied.

Dated: May 5, 1986

Respectfully submitted,

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